IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

BRAINWARE, INC.,

Plaintiff,

v. Civil Action No.: 3:11cv755

SCAN-OPTICS, LTD.,

Defendant.

**ANSWER PRESENTING DEFENSES**

COMES NOW, Defendant Scan Optics, Ltd. ("Scan Optics"), by counsel, and for its Answer to the Complaint filed by Plaintiff Brainware, Inc. ("Brainware"), states as follows:

1. The allegations of Paragraph 1 of the Complaint are denied.

2. The allegations of Paragraph 2 of the Complaint are denied.

3. The allegations of Paragraph 3 of the Complaint are denied.

4. The allegations of Paragraph 4 of the Complaint are denied.

5. Upon information and belief, the allegations of Paragraph 5 of the Complaint are admitted.

6. The allegations of Paragraph 6 of the Complaint are admitted.

7. Paragraph 7 contains conclusions of law to which no response is required.

8. Paragraph 8 contains conclusions of law to which no response is required. To the extent a response is required, Scan Optics denies that it executed the Agreement and/or otherwise entered into an enforceable contract with Brainware, and the allegations

of Paragraph 8 are therefore denied. To the extent that Paragraph 8 of the Complaint sets forth text allegedly contained in the document which Brainware alleges constitutes the Agreement, such document speaks for itself and any allegations inconsistent with the text of that document are denied.

9. Paragraph 9 of the Complaint sets forth legal conclusions to which no response is required. To the extent a response is required, the allegations of Paragraph 9 of the Complaint are denied.

10. Upon information and belief, the allegations of Paragraph 10 of the Complaint are admitted.

11. Scan Optics has insufficient knowledge to either admit or deny the allegations of Paragraph 11 of the Complaint, and those allegations are therefore denied.

12. Scan Optics admits that Brainware's website is located at www.brainware.com. Scan Optics has insufficient knowledge to either admit or deny the contents of Brainware's website, and therefore denies the remaining allegations of Paragraph 12 of the Complaint.

13. Scan Optics has insufficient information to either admit or deny the allegations contained in Paragraph 13 of the Complaint, and therefore denies the same.

14. The allegations of Paragraph 14 of the Complaint are denied.

15. The allegations of Paragraph 15 of the Complaint are denied.

16. The allegations of Paragraph 16 of the Complaint are denied.

17. The allegations of Paragraph 17 of the Complaint are denied.

18. Scan Optics denies the allegations contained in Paragraph 18 of the Complaint, as no enforceable contract with Brainware was formed. To the extent that Paragraph 18 of the Complaint sets forth text allegedly contained in the document which Brainware alleges constitutes the Agreement, such document speaks for itself and any allegations inconsistent with the text of that document are denied.

19. Scan Optics denies any obligations under the alleged Agreement, as no enforceable contract with Brainware was formed. To the extent that Paragraph 19 of the Complaint sets forth text allegedly contained in the document which Brainware alleges constitutes the Agreement, such document speaks for itself and any allegations inconsistent with the text of that document are denied.

20. Scan Optics denies any obligations under the alleged Agreement, as no enforceable contract with Brainware was formed. To the extent that Paragraph 20 of the Complaint sets forth text allegedly contained in the document which Brainware alleges constitutes the Agreement, such document speaks for itself and any allegations inconsistent with the text of that document are denied.

21. The allegations of Paragraph 21 of the Complaint are denied.

22. Scan Optics denies that it is obligated to make any payments alleged in Paragraph 22 of the Complaint.

23. The allegations of Paragraph 23 of the Complaint are denied.

24. Scan Optics incorporates, by reference, its responses to Paragraphs 1-22 of the Complaint as if set forth fully herein.

25. The allegations of Paragraph 25 of the Complaint are denied.

26. The allegations of Paragraph 26 of the Complaint are denied.

27. The allegations of Paragraph 27 of the Complaint are denied.

28. The allegations of Paragraph 28 of the Complaint are denied.

29. Scan Optics incorporates, by reference, its responses to Paragraphs 1-28 of the Complaint as if set forth fully herein.

30. The allegations of Paragraph 30 of the Complaint are denied.

31. The allegations of Paragraph 31 of the Complaint are denied.

32. Scan Optics denies that it is obligated to Brainware in any amount.

33. Any allegation not expressly admitted herein is denied.

**First Defense: Failure to State a Claim**

Scan Optics has failed state a claim upon which relief can be granted.

**Second Defense: Lack of Mutual Assent**

Scan Optics submits that there was no agreement as to the essential terms of any alleged agreement and there was therefore no mutual assent to the terms of such alleged agreement, and thus no valid agreement was formed. While expressly denying the existence of any contract, Scan Optics avers that Brainware presented Scan Optics with a draft form agreement, whereafter the parties negotiated modifications to that form agreement. Brainware thereafter induced Peter Moralee to sign the signature page of the agreement, to which the negotiated changes had not been made. The executed agreement therefore did not reflect mirror-image terms to which the parties mutually assented.

**Third Defense: Fraudulent Inducement**

While expressly denying the existence of any contract, Scan Optics avers that any alleged agreement between the parties is voidable by reason of fraud. In negotiating the alleged contractual terms, Brainware made intentional and/or negligent misrepresentations concerning material facts, for the purpose of securing the contract, which misrepresentations Scan Optics relied upon and which induced it to enter into the contract. Specifically, Brainware's agents, including Colin Kaye, made extensive misrepresentations, including, but not limited to, the nature and extent of professional services work available to Scan Optics if it entered into an agreement, sales leads that were available to Scan Optics through a lead generation system, and a formalized partner training program available and necessary to implement the Brainware software. Scan Optics relied on these misrepresentations. Any agreement which resulted from these misrepresentations should therefore be set aside.

**Fourth Defense: First Material Breach**

While expressly denying the existence of any contract, Scan Optics avers that if any alleged agreement between the parties was formed, Brainware's claim is barred by its own material breach of contract and failure to perform conditions precedent to Scan Optics' performance. Specifically, Brainware failed to provide the licenses and other software required by the agreement, failed to train Scan Optics and provide technical support as promised, and failed to provide sales leads as promised, causing Scan Optics to be unable to perform its obligations under any agreement between the parties.

WHEREFORE, having fully answered, Defendant Scan Optics, Ltd. requests that this matter against it be dismissed, together with costs incurred herein; and the award of such other and further relief as the Court deems just and proper.

Respectfully submitted,

SCAN OPTICS, LTD.
By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 2011, I electronically filed the foregoing Answer to Counterclaim with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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